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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/954,555 | 09/17/2001 | Paul J. Thompson | 11576.55US11 | 9046 |
| 23552 | 7590 | 06/03/2004 | EXAMINER | |
| MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903 | | | STEWART, ALVIN J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3738 | |
| DATE MAILED: 06/03/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,555

Applicant(s)

THOMPSON ET AL.

Examiner

Alvin J Stewart

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-34,36-39,45-51 and 53-61 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-34,45-51 and 53-61 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,16,17,30 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 12-15,18-20,26-28,34,48 and 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02/04/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Terminal Disclaimer***

The terminal disclaimer filed on March 04, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent 6,623,518 B2 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Amendment

Claims 44 and 52 are canceled.

Claims 7-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 6, 16-17, and 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Letendre et al US Patent 6,267,783 B1.

Letendre et al discloses a catheter (40) having an elongated member (60), a stent (12), a sheath (50), a male interlock (20), a female interlock (54), and a cell defined region (see Figs. 3-5). The sheath is slidably positioned between an opened configuration and a closed configuration. The interlock configurations are capable of having any shape (see col. 8, lines 19-20).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Letendre et al US Patent 6,267,783 B1 in view of Johnson et al US Patent 5,817,102.

Letendre et al discloses the invention substantially as claimed. However, Letendre et al does not disclose an elongated member comprising radiopaque markers positioned adjacent to the implant.

Johnson et al teaches a catheter comprising a tubular member (26) covered by a stent (66) and covered by a sheath (18). The elongated member comprises a plurality of radiopaque markers (58, 60, 62 and 64) for the purpose of locating the catheter and the stent during the deployment of the stent (see col. 6, lines 1-3).

*Note: It is well known in the art to use radiopaque markers in order to locate the catheter within the body).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the radiopaque markers of the Johnson et al catheter to the elongated member of the Letendre et al reference in order to locate the catheter and the stent within the body.

Allowable Subject Matter

Claims 21-34, 45-51 and 53-61 are allowed.

Claims 12-15, 18-20, 26-28, 34, 48 and 49 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed March 01, 2004 have been fully considered but they are not persuasive.

The Letendre et al reference still reads on the rejected claims. The phrase "at least a portion of the first interlock structure" in independent claims 1, 36 and 38 make the claims broad. For example, the word "portion" has been interpreted by the Examiner as any area along the length of element 20 (within 5 millimeters from the cell region) in the Letendre et al reference. The "portion" is located within the distance at most 5 millimeters from the cell defining region to the end of the interlock structure (see attachment). The Applicant should disclose at least two enlargements positioned at the terminal end of the stent and the enlargements being located a distance from the cell defining region of the implant, the distance being at most 5 millimeters from the cell defining region.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

A handwritten signature in cursive script that reads "A. Stewart".

Alvin Stewart
November 24, 2003.